

MAR 19 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RRAFMAN KOCI,

Petitioner,

v.

MICHAEL MUKASEY,\*\*

Respondent.

Nos. 04-71718

04-75386

Agency No. A75-682-288

MEMORANDUM\*

On Petition for Review of Orders of the  
Board of Immigration Appeals

Argued and Submitted November 9, 2007  
Pasadena, California

Before: PAEZ and RAWLINSON, Circuit Judges, and CONLON,\*\* District  
Judge

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* Michael Mukasey is substituted for his predecessor, Alberto R.  
Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P.  
43(c)(2).

\*\*\* The Honorable Suzanne B. Conlon, Senior United States District  
Judge for the Northern District of Illinois, sitting by designation.

Rrafman Koci, a native and citizen of Albania, petitions for review of a Board of Immigration Appeals (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”) (No. 04-71718), and the BIA’s order denying his motion to reopen based on ineffective assistance of counsel (No. 04-73586). This court has jurisdiction to review final BIA orders. 8 U.S.C. § 1252(a).

In his direct appeal, Koci challenges the IJ’s adverse credibility determination, which must be supported by substantial evidence on review. *Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002). The record fully supports the IJ’s reasons for finding Koci incredible. Koci initially claimed his wife and child still resided in Albania, where his wife was in hiding in fear for her life; he later admitted his family resided with him in the United States. The initial lie was clearly intended to buttress his asylum claim. He denied several times under oath that he was related to his only witness. After consulting with counsel during a recess, Koci then admitted the witness was his brother-in-law. In addition, he produced a certificate of questionable authenticity to support his claim he served as a judge in Albania, advanced as one of the reasons he was persecuted. The questionable document and untruthful testimony substantially supports the BIA’s

adverse credibility determination. *Kaur v Gonzales*, 418 F. 3d 1061, 1067 (9th Cir. 2005).

The BIA also correctly concluded the IJ's denial of relief under the CAT was based on a consideration of all evidence submitted in Koci's application for relief. The IJ cited but did not specifically discuss all documentary evidence, including the State Department's country report for Albania. This was minimally sufficient under the circumstances. *See Almaghzar v. Gonzales*, 457 F.3d 915, 922-23 (9th Cir. 2006) (denial of CAT relief upheld where IJ generally stated he considered all evidence, petitioner's testimony was discredited, and country report of torture in Albania did not compel conclusion petitioner would be tortured).

In his motion to reopen, Koci asserted his previous counsel was ineffective for failure to file a brief or raise a due process claim because his hearing transcript was incomplete. The denial of a motion to reopen is reversed only if it is "arbitrary, irrational, or contrary to law." *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002). The BIA's denial of Koci's motion to reopen was a rational exercise of discretion. The record here stands in contrast with that in *Grigoryan v. Mukasey*, No. 05-77020, --- F.3d ----, 2008 WL 307455 (9<sup>th</sup> Cir. February 5, 2008), where counsel's failure to file an adequate appellate brief was deemed presumptively prejudicial. Even though Koci's attorney failed to file an appellate brief, the record does not support a presumption of prejudice because the BIA addressed Koci's

direct appeal on the merits, and considered all arguments raised in his notice of appeal. *Cf. Grigoryan*, 2008 WL 307455 at \*2 (noting a summary affirmance by the BIA.) Koci has not identified any argument or issue that was foreclosed by counsel's failure to file a brief or by the unavailability of a complete transcript.

**THE PETITIONS IN NOS. 04-71718 AND 04-75386 ARE DENIED.**